

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 21864 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

=====

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

=====

LILABEN KALIDAS KAHAR - Petitioner(s)**Versus****COMMISSIONER OF POLICE-BARODA CITY & 2 - Respondent(s)**

=====

=====

Appearance :

MS DR KACHHAVAH for Petitioner(s) : 1, MR KAMLESH KACHHAVAH for
 Petitioner(s) : 1,
 RULE SERVED BY DS for Respondent(s) : 1 - 2.
 GOVERNMENT PLEADER for Respondent(s) : 3,

=====

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 31/01/2006****ORAL JUDGMENT**

1. The petitioner has filed habeas corpus petition under Article 226 of the Constitution of India challenging the order of detention dated 17.10.05.

under the provisions of section 2 (b) of the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "PASA" Act.) The petition was filed on 25.10.05 and the matter was placed for hearing on 27.10.05. The Court had issued Rule and the same was made returnable within four weeks of that order. On behalf of the respondent Mr. Pujari learned APP appears. With the consent of the parties the matter is taken up for hearing.

2. Mrs. DR Kachhavah learned advocate for the petitioner has invited my attention to the order of detention passed under section 3(2) of the PASA Act dated 17.10.05. He has also invited my attention to the order dated 17.10.05 sending the petitioner to Sabarmati Jail.

3. The learned advocate has also invited my attention to the grounds supplied by the authority in this behalf. From the grounds it reveals that the petitioner has committed offence under jurisdiction of the Karelibaugh police station and all offences are under Prohibition Act.

2. The first offence was committed at Karelibaugh police station on 11.2.04 under section 66 B, 65 E and 81 of the Bombay Prohibition Act. It is alleged that the petitioner is storing 27 lts country liquor valued at Rs. 540/- and cash of Rs 180/-.
3. The second offence was committed at Karelibaugh police station on 23.11.04 under section 66 B, 65 E and 81 of the Bombay Prohibition Act. It is alleged that the petitioner is storing 33 lts country liquor valued at Rs 660/-.
4. The third offence was committed at Karelibaugh police station on 6.10.05 under section 66 (1)B, 65 E, 81 of the Bombay Prohibition Act. It is alleged that the petitioner is storing 33 lts of country liquor valued at Rs 660/-.
5. The fourth offence was committed at Karelibaugh police station dated 7.10.05 under section 66B, 65E of the Bombay Prohibition Act. It is alleged that the petitioner is storing 21 lts of country liquor valued at Rs 420/-.

6. The learned advocate for the petitioner stated that in view of this grounds which has been supplied to the petitioner the petitioner could not have been detained under provisions of the PASA Act. The same is vitiated in this behalf. She has submitted that even if all the four incident are taken together there may be violation of law and order situation but not "public order" in this behalf. In support of the same the learned advocate has relied upon the judgement of the Apex Court in the case of Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another reported in AIR 1989 SC 491. and Division Bench judgement in the case of Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393.

7. On behalf of the respondent Mr. Pujari appears. He has tried to rely upon the order of detention in this behalf. He has also filed affidavit of Deepak Swaroop , IPS Commissioner of Police Baroda city. In the affidavit in reply it has been stated that the order of detention is based on criminal offence registered against the detenu. Four offences have been registered against the petitioner under the

provisions of Bombay Prohibition Act. The petitioner is illegally selling liquor in large quantity. The liquor is dangerous to public health and lives and likely to create health hazard in general public. All the evidences are available to prove that the petitioner is involved in these offences. All the documentary evidences are supplied to the petitioner. The petitioner is not disturbing the law and order but disturbing the public order. After carefully considering and satisfying the evidence of the authority passed the order of detention and the same is just, legal and proper.

8. Having heard learned counsel for the parties and perused the record, in my view, the detaining authority has passed the order of detention without there being any credible or cogent material about the detenu's activity likely to be breach of public order. In my view even if all the actions which has been taken into consideration the action of the detenu will only violate the law and order. In my view the contention of the petitioner is well founded and covered by the judgement of the Apex Court in the case of Piyush Kantilal (supra) and the Division

Bench judgement of this court in Ashok Jivabhai (supra). In view of the aforesaid position the subjective satisfaction allowed by the authority is vitiated. The petition deserves to be allowed. The petition is allowed. The order of detention dated 17/10/2005 is quashed and set aside. The detenu Lilaben Kalidas Kahar is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M.MEHTA, J)

mv